

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
CALPOINT (ILLINOIS), LLC)
) No. 01-0608
Application for a certificate)
of local and interexchange)
authority to operate as a)
facilities-based carrier of)
telecommunications services in)
all areas of the state of)
Illinois.)
Chicago, Illinois

November 19, 2001

Met pursuant to notice at 11:00 a.m.

BEFORE :

MR. JOHN T. RILEY, Administrative Law Judge.

APPEARANCES:

MS. SARA LEIBMAN
701 Pennsylvania Avenue Northwest
Washington, D.C., 20004
Appearing for the Applicant;

MS. KAREN BUCKLEY and
MS. BARBARA LANKFORD
527 East Capitol Avenue
Springfield, Illinois 62701
Appearing for Staff.

SULLIVAN REPORTING COMPANY, by
Christine L. Kowalski, RPR, CSR

1		<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>
3	James F. McGovern	17	20		<u>By</u> <u>Examiner</u>
4			25		19
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6					33
7					
8	<u>Number</u>	<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>			
9	Applicant's	<u>For Identification</u>			<u>In Evidence</u>
10	No. 1		28		28
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1 JUDGE RILEY: Pursuant to the direction of the
2 Illinois Commerce Commission, I now call
3 Docket 01-0608. This an application by Calpoint
4 Illinois, LLC, for certificates for facilities-based
5 interexchange and facilities-based local
6 telecommunications services in Illinois.

7 And, Ms. Leibman, beginning with
8 you, would you enter an appearance for the record,
9 please.

10 MS. LEIBMAN: My name is Sara Leibman, and I am
11 counsel for Calpoint, LLC.

12 JUDGE RILEY: And your office address, please.

13 MS. LEIBMAN: 701 Pennsylvania Avenue Northwest,
14 Suite 900, Washington, D.C. 20044.

15 JUDGE RILEY: Thank you.

16 And Staff, we don't have counsel
17 on this one, do we?

18 MS. LANKFORD: No, we don't.

19 JUDGE RILEY: All right. Staff, could you
20 identify yourselves.

21 MS. LANKFORD: Oh, I'm sorry, this is Barb
22 Lankford.

1 JUDGE RILEY: And, Ms. Buckley, you're there
2 also?

3 MS. BUCKLEY: Yes, sir, I'm the accountant for
4 the Rate Department, Telecommunications Division.

5 JUDGE RILEY: Okay.

6 MS. BUCKLEY: 527 East Capitol Avenue,
7 Springfield, Illinois.

8 JUDGE RILEY: Thank you.

9 And, Ms. Leibman, did you want to
10 call your witness at this time?

11 MS. LEIBMAN: Yes.

12 For the record, Mr. McGovern, can
13 you please state your name and your position with
14 Calpoint.

15 MR. JAMES MCGOVERN: Yes, I'm James F. McGovern,
16 and I'm the president and chief executive officer of
17 Calpoint.

18 JUDGE RILEY: Let me swear you in.

19 (Witness sworn.)

20 JUDGE RILEY: Please proceed.

21

22

1 JAMES F. McGOVERN,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MS. LEIBMAN:

7 Q. Okay. Mr. McGovern, did Calpoint Illinois,
8 LLC, file an application for a certificate to become
9 a telecommunications carrier with the Commission on
10 September 24th, 2001?

11 A. Yes, we did.

12 Q. And the Commission looks at the managerial,
13 technical, and financial qualifications of
14 applicants. Is Calpoint qualified under these
15 criteria?

16 A. Yes, it is.

17 MS. LEIBMAN: I'll now turn over the witness to
18 the Commission Staff for any further questions.

19 JUDGE RILEY: Okay. Thank you.

20 Staff, let me interject very
21 briefly here.

22 Ms. Leibman, I want to ask you,

1 with regard to the applications that have been
2 filed, there's quite a bit of documentation here.
3 What I have is an original application that was
4 actually date-stamped by our Clerk's Office
5 September 25. That's the original application; is
6 that correct?

7 MS. LEIBMAN: That's correct.

8 JUDGE RILEY: And subsequent to that, there is
9 a -- there was an application, a partial
10 application, to which was attached a letter dated
11 October 24th, 2001, which states that it is an
12 amendment to the original application.

13 MS. LEIBMAN: That's correct. We were advised by
14 Staff to file -- to withdraw our request for a
15 waiver of Part 735 --

16 JUDGE RILEY: Right.

17 MS. LEIBMAN: -- and we did it pursuant to an
18 amendment. And then the Secretary's Office called
19 and asked us to file that as an erratum instead of
20 an amendment.

21 JUDGE RILEY: Okay. And is it my understanding
22 that the November 1, 2000 (sic) filing of the errata

1 that -- your cover letter is dated November 2001.
2 It's date-stamped November 2. That errata actually
3 supersedes the October 24, 2001 letter that you
4 sent; is that correct?

5 MS. LEIBMAN: That is correct.

6 JUDGE RILEY: Okay. I just wanted to make sure
7 of that.

8 EXAMINATION

9 BY

10 JUDGE RILEY:

11 Q. Mr. McGovern, let me ask you one preliminary
12 question before I turn you over to Staff. With
13 regard to the appendices that were attached to the
14 original application on September 25 -- they're
15 marked Appendix A, Appendix B, and Appendix C -- is
16 it my understanding that you are adopting these
17 standard questions and answers as your testimony at
18 this time?

19 A. We are, yes, sir.

20 Q. All right. And is it my understanding that
21 you are not adopting Appendix D insofar as I don't
22 see any answers to any of the questions here?

1 A. Well, let me take a look at Appendix D.

2 That is correct.

3 JUDGE RILEY: Okay. Staff, who wants to begin

4 with the cross- --

5 MS. LANKFORD: This is Barb Lankford. I'll

6 start.

7 JUDGE RILEY: Go ahead.

8 CROSS-EXAMINATION

9 BY

10 MS. LANKFORD:

11 Q. Mr. McGovern, I just want to clarify what

12 authority you are requesting because I noticed in

13 the application that you're not requesting any

14 authority for resale of local or interexchange; is

15 that correct?

16 A. That's correct. We will be a

17 facilities-based provider.

18 Q. Okay.

19 A. And providing, you know, managed wavelength

20 services for data transmission.

21 Q. Okay. So you will not be providing any

22 voice grade service?

1 A. That's correct at this time.

2 Q. Okay. All right. Do you have any pending
3 applications in any other states?

4 A. Yes, we do. We have them in nine states,
5 and I believe that we have indicated those to you in
6 the application. Let me see where I have that. I
7 think that's indicated in the -- yeah, in the
8 questions. No. 16, I think we've indicated pending
9 applications in Colorado; California;
10 Washington, D.C.; Florida; Georgia; Massachusetts;
11 New York; Texas; and the state of Washington.

12 Q. Okay. And have you been granted any
13 certificates in those states?

14 A. I'll have to refer to counsel as to how many
15 of those have been approved.

16 MS. LEIBMAN: A few of them have been approved.
17 Florida has been approved and -- let's see, I
18 believe Washington State was approved, and I think
19 New York has been approved.

20 MS. LANKFORD: Okay. All right.

21 BY MS. LANKFORD:

22 Q. Mr. McGovern, will your company be providing

1 a monthly detailed billing statement, and will it
2 list all services, features, taxes, and surcharges?
3 A. Yes, we will be providing that to our --
4 only customers.
5 Q. Okay.
6 A. It's not a very large carrier.
7 Q. And is the (866) 441-0661 your toll-free
8 number?
9 A. It is.
10 Q. And can that be reached from anywhere in the
11 U.S.?
12 A. Yes, it can.
13 Q. Okay. What are your business hours?
14 A. Our business hours are from 8:00 to 6:00,
15 but we'll provide full customer support 24 by 7.
16 Q. Okay. How do you plan on soliciting your
17 customers?
18 A. Through direct sales contacts, through our
19 own direct sales force.
20 Q. And you're just planning on providing, like,
21 data transmission only; is that --
22 A. That's correct.

1 Q. Okay. All right. And do you have -- your
2 customers, do they have to sign any letter of
3 authority or will there be like a third-party
4 verifier before you plan on just taking over a
5 service?

6 A. I'm not sure I understand.

7 Sara, can you help me on that one?

8 MS. LEIBMAN: Sure. At this point, all of
9 Calpoint's customers will be other carriers or large
10 business users from whom there will be -- there will
11 be contracts, detailed agreements with these
12 customers.

13 To the extent that Calpoint ever
14 takes on residential or small business customers, it
15 will have letters of authority or third-party
16 verification to prevent slamming.

17 MS. LANKFORD: Okay. All right.

18 BY MS. LANKFORD:

19 Q. Are you -- who is the customer services
20 contact person for the Consumer Services Division of
21 the Illinois Commerce Commission in case we would
22 get any complaints?

1 A. That would be David Love, who is our vice
2 president of network operations.

3 Q. Okay. And do you have a direct number other
4 than an 800 number directly to him?

5 A. I do. And his number would be
6 (303) 799-1997.

7 Q. And is there a fax number where he could be
8 reached?

9 A. Yeah. That number is (303) 799-0019.

10 Q. Are you currently providing services in
11 other states?

12 A. We are not currently providing other
13 services in other states.

14 MS. LANKFORD: Okay. I believe that's all the
15 questions I have. Thank you.

16 THE WITNESS: Thank you.

17 JUDGE RILEY: Thank you, Ms. Lankford.

18 And, Ms. Buckley, did you want to
19 proceed now?

20 MS. BUCKLEY: Yes.

21

22

1 FURTHER CROSS-EXAMINATION

2 BY

3 MS. BUCKLEY:

4 Q. Mr. McGovern, you said in the application
5 that the company currently employs six or seven
6 people. Is that including the officers?

7 A. We are now up to 12 people, and that is
8 including the officers.

9 Q. Okay. And all the books and records will be
10 kept at your California office?

11 A. Yes, they will.

12 MS. BUCKLEY: Okay. I have received a chart of
13 accounts of the GEP (phonetic) account and also have
14 received confidential seals issuing of the note.
15 That's all I have right now.

16 THE WITNESS: All right.

17 JUDGE RILEY: Okay. Thank you very much.

18 Mr. McGovern, I have a couple of
19 questions of my own.

20

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22

1 FURTHER EXAMINATION

2 BY

3 JUDGE RILEY:

4 Q. Is it my understanding that the Applicant is
5 requesting permission to keep its books and records
6 in California at its principal place of business?

7 A. Yes, we are because we will have a number of
8 subsidiary companies. And so it just makes economic
9 sense from our point of view that that activity and
10 the accounting of those activities --

11 Q. All right. Let me find my outline here.

12 To make certain that I understand
13 which certificates you're requesting, you had stated
14 that the Applicant is not seeking any resold
15 certificates at all; is that correct?

16 A. That's correct.

17 Q. This is strictly facilities-based
18 interexchange and facilities-based local?

19 A. Precisely.

20 Q. Is the name that is to appear on the
21 certificate the same as the name that is to appear
22 on the application? In other words, that's

1 Calpoint Illinois, LLC?

2 A. Yes.

3 Q. There is no -- there will be no "doing
4 business as" or any assumed names at all?

5 A. No.

6 Q. All right. And this is a California
7 corporation?

8 A. It is.

9 MS. LEIBMAN: An LLC.

10 THE WITNESS: An LLC, yes.

11 JUDGE RILEY: California LLC. Thank you.

12 BY JUDGE RILEY:

13 Q. And with regard to the testimony that you
14 have adopted as shown on Appendix -- Appendices A,
15 B, and C, are there any other additions, deletions,
16 or other changes that you would make to that
17 testimony?

18 A. Not at this time, no. I think that's an
19 indication of our intent.

20 JUDGE RILEY: Then I am going to mark that
21 testimony as Applicant's Exhibit 1.

22

1 (Whereupon, Applicant's
2 Exhibit No. 1 was
3 marked for identification
4 as of this date.)

5 JUDGE RILEY: And would I be correct in saying,
6 Counsel, that you're moving for the admission of the
7 testimony into evidence?

8 MS. LEIBMAN: I am moving for the admission of
9 that testimony into evidence.

10 JUDGE RILEY: And, Ms. Lankford, any objection?

11 MS. LANKFORD: No.

12 JUDGE RILEY: Ms. Buckley, any objection?

13 MS. BUCKLEY: No, sir.

14 JUDGE RILEY: Then Applicant's Exhibit 1 is
15 admitted into evidence.

16 (Whereupon, Applicant's
17 Exhibit No. 1 was
18 admitted into evidence as
19 of this date.)

20 BY JUDGE RILEY:

21 Q. Who will -- Mr. McGovern, who will do the
22 technical support for the Applicant?

1 A. We will be both providing it with our staff
2 of engineers and we will be entering into and have
3 entered into with our existing customers customer
4 support and technical assistance from them.

5 Q. So it will be both partially? You'll do
6 some of your own and contract out for other --

7 A. Exactly.

8 Q. Okay. When you say that the Applicant is
9 going to provide data transmission services only,
10 what does that mean?

11 A. Well, it means that we will not be into
12 providing services to residential and consumers, nor
13 will we be providing voice.

14 Q. Okay. What constitutes data transmission,
15 or is that too broad a concept to actually define?

16 A. You know, it's anywhere from Internet
17 services to ISPs. We'll be providing primarily to
18 other carriers who in turn will be providing IP
19 services to their end.

20 Q. Okay. And will the Applicant adhere to all
21 federal and state laws and regulations with regard
22 to slamming and cramming?

1 A. Yes.

2 Q. And it's my understanding that insofar as
3 there are no voice grade services to be offered,
4 there will not be any operator-assisted services to
5 be offered?

6 A. That's correct.

7 JUDGE RILEY: That's all the questions I have,
8 Mr. McGovern.

9 Counsel, I wanted to ask you, the
10 one thing that I am missing here, and I know that
11 you would want to file this under seal, was the
12 financial data.

13 MS. LEIBMAN: Which financial data? We did file
14 some -- some financial data. We filed some -- with
15 the applicant (sic) we filed the cash flow charts
16 and then a description of the financing that
17 Calpoint has entered into so far. We should be --

18 THE WITNESS: You'll find that in Exhibit...

19 JUDGE RILEY: I'm sorry?

20 THE WITNESS: You'll find what counsel is talking
21 about in Exhibit E, the cash flow --

22 JUDGE RILEY: See, what I'm saying is that there

1 is nothing in Exhibit E. All I have is a cover
2 page.

3 THE WITNESS: Oh.

4 JUDGE RILEY: There was nothing there.

5 MS. LEIBMAN: Well, we filed that under seal,
6 so...

7 JUDGE RILEY: Well, Counsel, how do I get a look
8 at that if it's filed under seal? I mean, I --

9 MS. LEIBMAN: Oh, I just assumed -- I'm sorry --
10 that the secretary would share it with the Staff as
11 necessary, but I would be happy to provide you with
12 a copy of that directly.

13 JUDGE RILEY: Staff, have you seen the
14 information that they're talking about?

15 MS. BUCKLEY: Sir --

16 JUDGE RILEY: Ms. Lankford?

17 MS. LANKFORD: I haven't, but that's kind of
18 Karen Buckley's area, so I wouldn't need to look at
19 that.

20 JUDGE RILEY: Okay. Ms. Buckley, have you seen
21 that information?

22 MS. BUCKLEY: Yes, I have seen it. I had to --

1 went to the Clerk's Office and obtained a copy of
2 that. I also have a copy of -- description of the
3 note financing transactions. I have reviewed them.

4 JUDGE RILEY: All right. I just wanted to make
5 sure that you had seen them.

6 MS. BUCKLEY: Yes, sir.

7 JUDGE RILEY: Ms. Leibman, could -- how soon can
8 you get a copy of that to me? Can you get a copy of
9 that to me today? Could it be faxed?

10 MS. LEIBMAN: Sure. Sure. I will fax you the --
11 I think it was one exhibit and then a follow-up
12 document that we filed under seal.

13 JUDGE RILEY: Okay. Would it be possible for you
14 to do that right now?

15 MS. LEIBMAN: Yes.

16 JUDGE RILEY: Because I would like to have that
17 information before we close the record here. And if
18 I can at least get a brief look at that plus a Staff
19 recommendation, we may be okay.

20 MS. LEIBMAN: Okay. I'm doing it right now.

21 JUDGE RILEY: Let me give you my fax number.

22 MS. LEIBMAN: Okay.

1 JUDGE RILEY: It's (312) 814-7289.

2 MS. LEIBMAN: Okay. That should be to you any
3 minute now.

4 JUDGE RILEY: Okay. I'll go down and wait by the
5 fax machine.

6 (Brief recess taken.)

7 JUDGE RILEY: Back on the record.

8 Counsel, I have the confidential
9 information that you have submitted. And I note
10 that the financial information is -- that was filed
11 is -- the income statement and the cash flow
12 statement are pro forma. And as I understand that,
13 that means that these are projected?

14 MS. LEIBMAN: That's correct. They're projected
15 because the company has not yet commenced
16 operations.

17 JUDGE RILEY: I see.

18 FURTHER EXAMINATION

19 BY

20 JUDGE RILEY:

21 Q. Mr. McGovern, I have a description that was
22 just faxed to me of Calpoint note financing

1 transaction. This says notes in the principal
2 amount of 502,200,000 were issued on September 26 by
3 Receivable Structured Trust 2001.

4 Is all of that 502 million going
5 to be used to finance the operation of Calpoint?

6 A. Yes, it will.

7 JUDGE RILEY: All right.

8 Ms. Buckley, what is your
9 assessment of the Applicant's financing?

10 MS. BUCKLEY: When I look at this confidential
11 pro forma, I hope that their estimate will come to
12 pass, I really do. But it is really -- it is a good
13 plan. And then when I look at the description of
14 the financing transaction, usually we look at the
15 rating by the Moody's.

16 JUDGE RILEY: Okay.

17 MS. BUCKLEY: And \$502 million to -- to do for
18 the whole entire Calpoint I think is sufficient for
19 right now, at least for 12 months anyways.

20 As I can see, they are authorized
21 for doing business in three other states so far
22 including us. If I can have the privilege to

1 recommend, I think that that capital could be
2 sufficient.

3 JUDGE RILEY: And then do you -- do you have an
4 overall recommendation with regard to this
5 application?

6 MS. BUCKLEY: I recommend that we allow them to
7 do this data transmission here in our state.

8 JUDGE RILEY: And, Ms. Lankford, do you have a
9 recommendation with regard to this application?

10 MS. LANKFORD: I see no reason why this company
11 cannot receive certification.

12 JUDGE RILEY: Then that's all of the questions
13 that I have.

14 Ms. Leibman, did you have anything
15 further for your witness?

16 MS. LEIBMAN: No, I don't.

17 JUDGE RILEY: All right. Then I will direct the
18 court reporter to mark this matter heard and taken.

19 If you can give me a second, I
20 want to take one last look at my outline and make
21 sure...

22 I will direct the court reporter

1 to mark this matter heard and taken, and I will
2 prepare an order for the Commission.

3 Thank you very much.

4 MS. LEIBMAN: Thank you.

5 THE WITNESS: Thank you very much.

6 HEARD AND TAKEN.

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